

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

Staff of the)
Missouri Public Service Commission,)
)
Complainant,)
)
v.)
)
Noel Water Company, Inc.,)
Registered Agent: Dan M. Harmon,)
)
and)
)
Dan M. Harmon, President,)
)
101 Foster Street)
Noel, MO 64854)
)
CERTIFIED MAIL)
RESTRICTED DELIVERY)
)
Respondents.)

File No. WC-2011-0144

**ORDER AND
SECOND NOTICE OF CONTESTED CASE**

Issue Date: December 10, 2010

Effective Date: December 10, 2010

The Commission is issuing a second notice because there is no evidence of service of the first notice.

A. Complaint

On November 19, 2010, Staff filed the complaint. The complaint alleges that Noel Water Company, Inc., (“the company”), through its president Dan M. Harmon (“Mr. Harmon”) allowed a three-day lapse in service to its water customers, including the City of Noel’s fire department. The complaint seeks authorization to file an action for penalties in circuit court.

The complaint's filing vested the right to a pre-decision evidentiary hearing in the respondents,¹ starting a contested case² and triggering the following provisions of law:

Service in all . . . proceedings pending before the commission may be made . . . **by mailing** in a sealed envelope with postage prepaid [;³]

and:

The agency shall promptly **mail a notice** of institution of the case . . . to all **persons designated** by the moving party [;⁴]

and:

. . . Upon the filing of a **complaint**, the commission shall cause a **copy** thereof to be **served** upon the . . . **person complained of** [;⁵]

and:

Upon the filing of a complaint . . . , the secretary of the commission shall serve by **certified mail**, postage prepaid, a copy of the **complaint** upon the **person . . . against whom the complaint has been filed** [;⁶]

The complaint designated, complained of, and has been filed against, two respondents: the company and Mr. Harmon.

The complaint also designated Mr. Harmon as the company's registered agent.

B. First Notice

The Commission sent a notice and complaint ("process") to the company and to Mr. Harmon by separate certified mailings. Persons authorized to receive service of process are as follows:

¹ Section 386.390.5, RSMo 2000; *Jamison v. Dept. of Soc. Servs.*, 218 S.W.3d 399, 408-09 (Mo. banc 2007); *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976).

² Sections 536.063(1), RSMo 2000; Section 536.010(4), RSMo Supp. 2009.

³ Section 386.390.4, RSMo 2000 (emphasis added).

⁴ Section 536.067(1), RSMo 2000 (emphasis added).

⁵ Section 386.390.3, RSMo 2000 (emphasis added).

⁶ 4 CSR 240-2.070(7) (emphasis added).

Service . . . may be made upon any person upon whom summons may be served in accordance with the provisions of the code of civil procedure of this state [.7]

The code of civil procedure of this state provides service on an individual as follows.

(b) How and on Whom Made. Personal service within the state shall be made as follows:

(1) *On Individual.* Upon an individual, including an infant or incompetent person not having a legally appointed guardian, by delivering a copy of the summons and petition personally to the individual or by leaving a copy of the summons and petition at the individual's dwelling house or usual place of abode with some person of the individual's family over the age of fifteen years, or by delivering a copy of the summons and petition to an agent authorized by appointment or required by law to receive service of process.

* * *

(3) *On Corporation, Partnership or Other Unincorporated Association.* Upon a domestic or foreign corporation . . . by delivering a copy of the summons and petition to an officer, partner, or managing or general agent, or by leaving the copies at any business office of the defendant with the person having charge thereof or by delivering copies to its registered agent or to any other agent authorized by appointment or required by law to receive service of process.⁸

Under those provisions, and the complaint's designation of Mr. Harmon as registered agent for the company, service on Mr. Harmon would constitute service on both respondents.

But the Commission addressed each certified mailing to:

Legal Department
110 Foster Street
Noel, MO 65854-0465.

⁷ Section 386.390.4, RSMo 2000.

⁸ Mo. Rule 54.13.

The mailing to the company added “P.O. Box 465” and did not name the registered agent Mr. Harmon. Neither mailing sought restricted delivery.

Each certified mail receipt bears the signature of one Tammy White, a person unidentified in the record. Each address’s notation of “-0465,” which signifies a post office box, suggests that that no one received Mr. Harmon’s process at his dwelling house or usual place of abode. It is unusual for an individual to authorize an agent by appointment to receive service of process. The file includes no allegation that Tammy White is an officer, partner, managing agent, general agent, or other agent with capacity to receive service of process.

Though neither party has challenged service, the provisions cited above impose an affirmative duty on the Commission to serve process. The complaint alleges no imminent danger, seeks no change of control, and expressly “prays the Commission will give such notice to Respondents as is required by law.”⁹ The complaint thus supports a brief delay in the filing of an answer, but does not support any avoidable complications in service of process.

Therefore, the Commission will order a second service of process.

C. Second Notice

A copy of the complaint accompanies this order and second notice.

A contested case is a formal hearing procedure, but the law allows waiver of procedural formalities and a decision without a hearing,¹⁰ including by stipulation and agreement.¹¹ Provisions governing discovery are at the Commission’s regulation

⁹ Complaint, fifth page, prayer for relief.

¹⁰ Sections 536.060, RSMo 2000.

¹¹ *Id.* and 4 CSR 240-2.115.

4 CSR 240-2.090. The Commission's regulations¹² require each respondent to file an answer not later than January 10, 2011.

As an alternative to the formal evidentiary hearing procedure, the Commission offers mediation. Mediation is a voluntary process in which a neutral person assists the parties in exploring opportunities for settlement. Upon a request for mediation, the Commission may suspend the filing date set forth in this order.

THE COMMISSION ORDERS THAT:

1. The Commission's Data Center shall transmit this *Order and Second Notice of Contested Case*, to Dan M. Harmon individually.

2. The Commission's Data Center shall transmit this *Order and Second Notice of Contested Case*, to Dan M. Harmon as registered agent for Noel Water Company, Inc.

3. Each mailing described in paragraph 1 and 2 shall be by certified mail, restricted delivery and return receipt requested, and shall include a copy of the complaint.

4. Dan M. Harmon shall file an answer not later than January 10, 2011.

5. Noel Water Company, Inc. shall file an answer not later than January 10, 2011.

6. An answer described in paragraphs 4 and 5 may be joint or separate.

¹² 4 CSR 240-2.070(7) and (8).

7. This order is effective when issued.

(S E A L)

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'S. Reed', is positioned above the printed name of the Secretary.

Steven C. Reed
Secretary

Daniel Jordan, Regulatory Law Judge,
by delegation of authority pursuant
to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 10th day of December 2010.